



### **Informal Hearing Determination**

**Company:** A & G Coal Corporation **Permit No.:** 1102058

**Subject:** Notice of Violation RWH0007153 (RT)

**Conference:** March 28, 2012 at 10:00 a.m. **Location:** BSG Office

**Participants:** Mark S. Wooten, PE

On March 28, 2012, an informal hearing was held at the Big Stone Gap office of the Department of Mines Minerals and Energy (Room 211), in reference to the fact of violation for Notice of Violation RWH0007153. Representing A & G Coal Corporation was Mr. Mark Wooten, PE. The hearings officer was Harve Mooney. Mr. Wooten was afforded the opportunity to provide comments and/or information during the informal hearing. There were no attendees from the general public at this hearing.

### **Summary of Informal Hearing**

Notice of Violation RWH0007153 was issued to the operator on 02/22/2012 for failure to submit the "Coal Surface Mining Reclamation Fund Tax Reporting Form, " to DMLR for the fourth quarter of 2011, by January 15, 2012. The violation was given an abatement date of March 13, 2012 to comply the violation.

Mr. Mark Wooten spoke on behalf of the company. He noted that the company was unaware of the non-payment of fees until he learned of it at a meeting with DMLR officials in late January 2012. Mr. Wooten states that once he learned of the delinquent items, he noted to DMME officials he would take care of the problem. He stated the violations were cited before he could do anything. He stated that the Division had not notified the company that the taxes were due. He felt that they were denied due process in this matter by the agency.

Mr. Wooten also felt that the company was being treated unfairly. He stated that other companies had been delinquent but had not been cited. He stated that they had been late before but the Division (DMLR) had not notified them they were late, nor has the Division taken any action.

### **Informal Hearing Recommendation**

I have reviewed Notice of Violation No. RWH0007153, violation 1 of 1, and the associated inspection reports. I have also reviewed the regulations cited within the violation document. I concluded my review and evaluation on March 29, 2012. Due to the number of violations to be reviewed, the applicant was advised that additional time would be needed to review the violation.

On February 23, 2012, DMLR Inspector Wayne Herrell conducted a partial inspection on A & G Coal Corporation permit number 1102058. As a result of that inspection, Inspector Herrell issued Notice of Violation No. RWH0007153 because the operator failed to submit the pool bond reclamation form by the specified date in violation of 4 VAC 25-130-801.15 (a) and (b) of the Virginia Coal Surface Mining Reclamation Regulations. In the notice of violation report, the inspector states,

*“The permittee has failed to submit the "Coal Surface Mining Reclamation Fund Tax Reporting Form" no later than the 15th day of the month after the end of the 4th quarter of 2011. NOV NO. RWH0007153 violation 1 of 1 is being issued for this violation. The permittee is required to (1) submit the "Coal Surface Mining Reclamation Fund Tax Reporting Form" within 15 days (3/13/12) and (2) Pay any tax due within 30 days (3/27/12) “*

Section 4 VAC 25-130-801.15(a) of the Virginia Coal Surface Mining Reclamation Regulations sets forth the applicable standards concerning submittal of reclamation tax forms associated with the coal surface mining operations. Specifically, 4 VAC 25-130-801.15 (a) states,

*“The division shall notify, in writing, each permittee participating in the Pool Bond Fund, at the end of each calendar quarter, of those periods during which the reclamation taxes are applicable or deferred. The permittee shall on a quarterly basis file a notarized copy of the "Coal Surface Mining Reclamation Fund Tax Reporting Form" with the division: Attention Director. The permittee shall file the report by permit and applicable tonnage mined, processed, and/or loaded no later than the 15th day of the month after the end of each calendar quarter, even if no coal was mined, processed and/or loaded on the permit(s).”*

Section 4 VAC 25-130-801.15(b) of the Virginia Coal Surface Mining Reclamation Regulations sets forth the applicable standards for submittal of reclamation taxes associated with the coal surface mining operations. Specifically, 4 VAC 25-130-801.15 (a) states,

*“Each permittee participating in the Fund shall submit to the division's Big Stone Gap Office full payment of the appropriate reclamation taxes required under 4VAC25-130-801.14(a) or (e) within 30 days after the end of the calendar quarter, when the taxes are applicable. Payment of the reclamation taxes shall be*

*in cash, cashier's check, certified check or personal checks made payable to the Treasurer of Virginia."*

A review of the records in the DMLR's Office of Financial Services revealed the following information. The DMLR official notification of the requirement to file reclamation taxes was disseminated to the permittee on January 4, 2012 by written correspondence. In accordance with 4VAC25-130-801.14(a) of the VCSMR, the permittee was required to submit the reclamation tax form by January 15, 2012. In addition, as per 4 VAC 25-130-801.15(b), full payment of the reclamation taxes are due within 30 days of the end of the quarter, in this instance by January 31, 2012.

A review of correspondence between the company and the Office of Financial Services reveals that the company was aware of the delinquent forms and taxes as of February 9, 2012, per emails to the company. In an email to DMME Director Butch Lambert, company representative Mark Wooten noted that the taxes were due January 31, 2012. The company advised that the taxes and forms would be submitted by February 17, 2012.

In accordance with Section 4 VAC 25-130-801.15(a), the permittee should have submitted a reclamation tax form no later than January 16, 2012. The actual date of receipt by the DMLR was February 27, 2012. Additionally, the permittee should have submitted the appropriate Reclamation Fund Fees no later than January 30, 2012, in accordance with 4 VAC 25-130-801.15(b). The actual date of receipt by the DMLR was February 27, 2012.

Based on the findings of this hearing, it is this hearings officer opinion that this violation was properly issued, and it is recommended that the violation be affirmed.

Informal Hearings Officer: \_\_\_\_\_

Date: \_\_\_\_\_